

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 575 of 2006 (MS)

Premoo s/o Sri Kalya, Village Chinyali
Patti Bisht, Tehsil Dunda, District Uttarkashi Petitioner

Versus

1. State of Uttaranchal
2. District Judge, Uttarkashi Respondents

Sri P.C. Jhingan, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 17.5.2006

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 18.3.2006 passed by the District Judge, Uttarkashi.

Briefly stated, proceedings under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, were initiated against the petitioner and ultimately order of eviction was passed against him on 21.6.1994 by the Prescribed Authority, Uttarkashi. The petitioner preferred an appeal against the said order in the Court of District Judge, Uttarkashi. The appeal was dismissed in default on 15.3.1996.

On coming to know about the order of dismissal of the appeal, the petitioner moved a restoration application along with the application under section 5 of the Limitation Act, for condonation of delay on 16.7.2003 on the ground that he

engaged one Sri Shardul Singh Negi, Advocate and on the assurance of the advocate that he will do pairavi in the case, the petitioner could not appear in the case. The petitioner has submitted that Sri Shardu Singh Negi, advocate shifted to Dehradun and he neither appeared in the Court nor informed the petitioner. The petitioner came to know about the dismissal of the case when a notice for eviction was served upon him on 28.6.2002. The petitioner immediately filed the application for restoration of the appeal along with an application under section 5 of the Limitation Act. The District Judge has rejected the application under section 5 of the Limitation Act on the ground that the petitioner has been negligent.

Application under section 5 of the Limitation Act shows that after obtaining stay order, he was not informed by the counsel about the progress of the case and the counsel himself left Uttarkashi and shifted to Dehradun. The counsel never informed the petitioner to engage another counsel and he has left Uttarkashi.

The counsel for the petitioner has submitted that client should not be punished for the fault of the counsel. In the case of Collector, Land Acquisition vs. Katiji (1987) 2 SCC 107, the Apex Court has observed as under:

It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

3. *“Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.

In the present case delay was not caused due to negligence or any mala fide on the part of the petitioner. Thus the District Judge was not justified in rejection the application of the petitioner for condonation of delay.

In view of above, a writ of certiorari is issued quashing the order dated 18.3.2006 passed by the District Judge, Uttarkashi. The appeal is restored to its original number. The District Judge is directed to decide the appeal on merit.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 17.5.2006

Rajesh Tandon, J.

*Dhyani